IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.882 OF 2005
IN
NOTICE OF MOTION NO.3502 OF 2004
IN
L.C. SUIT NO.6162 OF 2004

M/s.Charmee Corporation. Appellants
vs.
Kalyanji Dhanji Gadda & ors. Respondents

Mr.D.S.Sakhalkar for the appellants.

Mr.P.S.Dani for the respondent no.1.

Mr.S.V.Chavan i/b. M/s.Utangale & Co.for the respondent no.2.

Mr.A.R.Patil,A.G.P. for the respondent no.4.

Mr.Y.R.Dube for the respondent no.5.

Mr.S.T.Katkade for the respondent no.6.

CORAM : B.H. MARLAPALLE,J.

DATED : 29th September 2005

P.C.

Heard.

2. Admit.

3. Respondents waives service.

4. As the appeal challenges the interlocutory order

passed by the learned Judge of the City Civil Court on 8.8.2005 making Notice of Motion No.3502/04 absolute, this appeal is taken up for final hearing and disposal forthwith.

5. By the impugned order, the defendant no.2 has been directed to reserve and earmark one commercial premises admeasuring 225 sq.ft. abutting road anywhere in the same building including the building of free sale component.

6. The present appellant is the original defendant no.2-the developer. It appears that the present respondent no.1 filed S.C.Suit No.6162/04 on the main ground that he was entitled for a residential-cum-commercial premises abutting the road and this implies that the plaintiff is not happy with the present allotment. It is also the contention of the plaintiffs that the defendants 5 and 6 have been allotted premises for which they were not entitled or the usual method of lucky draw as not followed and, thus, they were granted favours. It has also been alleged that the defendant no.6 has been allotted two shops without a lucky draw. The learned Judge of the trial Court held that the entitlement of the plaintiff for allotment of a road facing premises is an issue required to be adjudicated in the Suit. In case the

plaintiff succeeds, either defendant no.5 or defendant no.6 will be affected inasmuch as there may be an exchange of the premises between the plaintiff and one of the said defendants. These are the issues which, as per the trial Court, will have to be determined on adjudication of the Suit. On the basis of this reasoning, it was not permissible for the trial Court to direct the defendant no.2 to reserve one more premises and to be allotted to the plaintiff in case he succeeds in the Suit. The Slum Rehabilitation Scheme on a particular plot is the time bound venture and in any case the plaintiff has been allotted the commercial-cum-residential premises as per his eligibility. The relief granted by the trial Court by the impugned order was unwarranted in the facts of this case and the said relief cannot be called as equitable relief inasmuch as the plaintiff holds one premises and gets a reservation by the Court's order on an additional premises. This cannot be called equity by any chance and, therefore, this appeal must succeed.

7. Thus, the appeal is allowed and the impugned order is hereby quashed and set aside. However, it is clarified that the allotment of the premises as already made to the plaintiff, defendant no.5 and defendant no.6 shall be subject to the final decree to be passed in the pending Suit by the trial Court. The trial of the Suit

is hereby expedited and as noted by the trial Court the trial of the Suit shall be completed by 31st December 2005.

8. Civil Application does not survive.

(B.H.MARLAPALLE,J.)